



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC O FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on June 7, 2016. The Landlord filed seeking a \$1,200.00 Monetary Order for payment of May 2016 rent and for other reasons; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

Upon review of the Landlord's application for Dispute Resolution the Landlord named two female respondents. The Tenant advised that one respondent name was a shortened version of her first name and the other was her middle name. The Tenant requested that her name be spelled correctly on the style of cause and listed correctly as being one respondent. The Landlord agreed to the requested corrections. Accordingly, the style of cause has been amended to show the Respondent's correct name, pursuant to section 64(3)(c) of the Act.

Each person affirmed they received the evidence from each other. No issues regarding service or receipt were raised. As such, I accepted the submissions from both parties as evidence for these proceedings.

In the Landlord's June 9, 2016 evidence submission they included photographs of the rental unit and a letter "regarding Refund of Damage Deposit" which indicated there were visible damages to the rental unit.

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be

the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

The *Residential Tenancy Branch Rules of Procedure # 4.1* provides that the applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. The applicant **must** submit an amended application to the Residential Tenancy Branch and serve the respondent with copies of the amended application [my emphasis added with bold text].

In this case the Landlord did not file an amended application and simply listed that there were damages their evidence; without providing a monetary order worksheet or a detailed list of the amounts being sought for the damages. Accordingly, I declined to hear matters which involved an amount not claimed on the original application.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to payment for May 2016 rent?

Background and Evidence

The parties entered into a month to month tenancy agreement which began on July 1, 2013. Rent of \$1,200.00 was payable on the first of each month. On June 23, 2013 the Tenant paid \$600.00 as the security deposit and \$100.00 as the pet deposit.

On April 29, 2016 the Tenant was issued a 2 Month Notice to end tenancy for landlord's use. The Notice was issued on the prescribed form listing an effective date of June 30, 2016 for the following reason:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

On May 11, 2016 the Tenant issued the Landlord a notice to end her tenancy effective May 31, 2016; a month earlier than the effective date of the 2 Month Notice. The Tenant vacated the unit as per her notice and attended the move out inspection on June 1, 2016.

The Landlord testified the Tenant failed to provide him proper notice to end the tenancy and she failed to pay him rent for May 2016. He now seeks to recover the \$1,200.00 for May 2016 rent.

The Tenant testified she tried to explain the *Act* to the Landlord regarding her entitlement to end the tenancy early and he would not listen to her explanation. She said she also attempted to inform him that she was entitled to compensation equal to one month's rent for being issued the 2 Month Notice; which she received by not paying her May 2016 rent; as that was her last month in the rental unit.

Analysis

The *Residential Tenancy Act* (the *Act*) stipulates provisions relating to these matters as follows:

Section 62 (2) of the *Act* states that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 50(1)(a) of the *Act* provides if a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice

Section 51(1) of the *Act* provides that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In addition, 51 subsection (1.1) of the *Act* states that a tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find, pursuant to section 62(2) of the *Act*, the Tenant ended her tenancy early in accordance with section 50 of the *Act*. I further find the Tenant was not required to pay rent for May 2016 as that was her compensation for receiving the 2 Month Notice, pursuant to section 51 of the *Act*.

Based on the above, I find the Landlord's application to be meritless and it is dismissed in its entirety, without leave to reapply. The Landlord was not successful with his application; therefore, I declined to award recovery of the filing fee.

Conclusion

The Landlord's application was dismissed, without leave to reapply.

This decision is final, legally binding, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 06, 2016

Residential Tenancy Branch